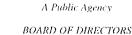
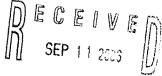
Placer County Water Agency

Business Center: 144 Ferguson Rd. * Mail: P.O. Box 6570 * Auburn, California 95604-6570 (530) 823-4850 800-464-0030 www.pewa.net



Pauline Roccueci • Alex Ferreira Otis Wollan • Lowell Jarvis Michael R. Lee David A. Breninver, General Manay

David A. Breninger, General Manager Ed Tiedemann, General Counsel



September 8, 2006 File No. Placer Ranch, Placer Vineyards and KT Communities' Regional University

PLANNING DEPT.

Mr. Paul Thompson, Principal Planner Placer County Planning Department 11414 B Avenue Auburn, CA 95603

Ms. Ann Baker, Principal Planner Placer County Planning Department 11414 B Avenue Auburn, CA 95603

SUBJECT:

Supplemental Information in support of PCWA's Water Supply Analysis for the Placer Vineyards, Placer Ranch and KT Communities' Regional University Projects.

Dear Mr. Thompson and Ms. Baker:

Commenters on the Placer Vineyards Draft EIR have questioned the efficacy of PCWA's PG&E water supply and PCWA's ability to serve proposed new development projects, particularly in light of the fact that: 1) the existing PG&E Zone 1 water supply contract for 100,400 AFA expires in 2013; and, 2) that the FERC license for the PG&E Drum Spalding Project also expires in 2013 and its renewal will be subject to new license conditions that commenters believe may significantly reduce the reliable supply available to PCWA.

Commenters have also asked for additional information in regards to the dry years impacts to PCWA's Yuba-Bear River supplies and the resultant impacts on water deliveries to PCWA's customers and these proposed developments.

The purpose of this letter is to provide Placer County with supplemental information on the above issues. The findings and conclusions presented in the SB 610 Water Supply Assessments for the above referenced projects remain unchanged.

Renewal of the PG&E Zone 1 Water Supply Contract

Most of the present supply of water used by PCWA to meet the demands of its customers in Zones 1 & 5 is supplied by Pacific Gas & Electric Company pursuant to the Agency's June 18, 1968 water supply contract with that company. While that contract states it will terminate May 2013, PG&E cannot change the place of use of that water if such a change in place of use would injure any legal user of that water. This is so whether PG&E's right to that water is based upon a pre-1914 appropriation or an appropriation pursuant to the Water Code. Sections 1706 and 1725 of the California Water Code state that a permittee or licensee may temporarily change the place of use provided that it would not injure any legal user of the water. That rule is also applicable to pre-1914 appropriations. That this is so with regard to pre-1914 appropriations is evidenced in Wells A. Hutchins' treatise entitled "The California Law of Water Rights" wherein he states on page 177:

The invariable rule has come to be that the right to change the place of use can be exercised only when and to the extent that the change will not injure the rights of others.

This is supported by reference to the decisions in Southern Cal Investment Co. v. Wilshire, 144 Cal. 68 (1904) and Southside Improvement Co. v. Burson, 147 Cal. 401 (1905) and former Civil Code 1412 which was the derivation of Water Code Section 1206.

There can be no question that a change in the place of use of the water now furnished to the Agency by PG&E for use in Zone 1 would be extremely injurious to the Agency's customers served from that supply. These are the residents, industries, agricultural and commercial users in and around Auburn, Rocklin, Lincoln and Loomis who number many thousands. While the price and other terms may change from those in the 1968 contract after 2013, under California law the place of use for that water must continue to be the same, because any change in that place of use would be injurious to the present legal beneficiaries using that water.

Relicensing the Drum-Spaulding Hydroelectric Facility

The Drum-Spaulding Hydroelectric Project is a FERC licensed facility, owned by PG&E, located primarily within the South Yuba and Bear River watersheds. The Project provides wholesale water to PCWA for consumptive use in Placer County and produces electricity which PG&E uses to meet the demands of its retail electric customers. Generally, the facility diverts water from Fordyce Creek and the South Fork of the Yuba River into storage. The main storage reservoirs are Lake Fordyce, with a storage capacity of 49,903 acre-feet, and Lake Spaulding, with a capacity of 74,800 acre-feet. The system conveys most of this water via canals and penstocks through a series of regulating reservoirs and powerhouses to Rollins Reservoir on the Bear River and then finally into Folsom Reservoir on the American River.

PG&E delivers Yuba-Bear River water to PCWA for consumptive use at numerous delivery points along the system. Portions of Drum Spaulding water system were built in the 1860s to supply water for mining and agriculture. Fordyce Lake was originally constructed in 1874. Hydroelectric generation capacity was added to the system in the early 1900s. The Drum Powerhouse was originally constructed in 1913. The current FERC license for the Drum Spaulding Hydroelectric Project expires in 2013.

FERC'S Relicensing Process

Under the 1920 Federal Power Act, FERC has the regulatory power to evaluate and approve license applications for hydropower projects and establish Protections, Mitigations and Enhancements as conditions for their operation. Under the Integrated License Process (ILP), the current default process that license applicants must use, five years before a hydropower license expires the applicant initiates the relicensing process by submitting a Pre-Application Document to FERC and filling a Notice of Intent to prepare and accompanying environmental documents. Over the next 3 years the applicant conducts environmental studies, consults with responsible resource agencies and prepares its license application with supporting environmental documentation. Concurrently, responsible agencies prepare recommended license conditions for submittal to FERC. Over the last 2 years FERC finalizes the environmental documents and issues final license conditions for the Project.

Water Quality Certification

The applicant must also prepare a Section 401 permit application under the Clean Water Act as part of the relicensing process. Section 401 allows the State Water Resources Control Board (SWRCB) to prescribe conditions necessary to ensure the facility complies with the Clean Water Act and any other applicable state laws. Section 401 also "provides that State certification conditions shall become conditions of any Federal license or permit for the facility."

License Conditions

Generally, FERC evaluates the entire relicensing application to determine what conditions to impose on the applicant. Due to particular system constraints, including physical or environmental factors, FERC may set license conditions that mandate minimum flows, reservoir levels, and temperature limitations.

Under the Federal Power Act (FPA), Congress allows some federal agencies, including the Secretary of the Interior and the Secretary of Commerce, to develop operating conditions for FERC licenses "in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife" (16 U.S.C. Section 803(j)(1)). "[S]uch conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies" (16 U.S.C. Section 803(j)(1)). However, FERC can reject in whole or in part any recommended condition if it is inconsistent with the stated purposed of 16 U.S.C. Section 803(j)(1) or any other applicable laws.

Section 27 of the Federal Power Act, 16 U.S.C. § 821, however, provides:

That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.

This statutory provision attempts to draw a bright line between water for hydroelectric purposes, which use is governed under the Federal Power Act, and water rights associated with consumptive purposes, in which latter case State water right law prevails.

Allocation of Dry Year Water Shortages

The Yuba-Bear River supply purchased from PG&E (the PG&E supply) has historically been the primary water supply for western Placer County. The original water system dates back to the California gold rush and the Zone 1 facilities operated by PCWA today were purchased from PG&E in 1968. All of the Agency's Zone 1 raw water customers and the Auburn/Bowman treated water system are served exclusively from the PG&E supply. Most of the present demands on the Foothill/Sunset treated water system and some of the irrigation demands in Zone 5 are also met with the PG&E supply. The remainder of the Foothill/Sunset and Zone 5 demands are currently met from diversion of MFP water from the American River at Auburn. As the treated water demands on the Agency's system grow in the future it will be necessary to further develop the Agency's currently unused MFP and CVP supplies to meet these demands.

As shown in Table ES-4 of the Agency's Integrated Water Resources Plan (IWRP), surface water supplies from the Yuba-Bear River system are subject to reductions during dry periods. In any dry year the South Sutter Water District supply is assumed to be reduced to zero and we have assumed a PG&E supply cutback of 25% in multiple year droughts and a 50% cutback in the driest single year event, such as a repeat of 1977 hydrology.

Due to the physical and geographic layout of PCWA's water supply and raw water delivery system (open channel configuration, location and altitude), dry year reductions in the PG&E supply cannot be reasonably mitigated with other sources of supply. Water which is delivered from the Yuba-Bear River serves a geographical area that will continue to be mostly separated from the PCWA's other water sources as they are developed to meet the urban development proposed in western Placer County. There are physical, environmental, and economic constraints that will likely prevent supplying any significant backup water from other sources to supply PCWA's raw water system.

As a result, raw water customers that are supplied by the Yuba-Bear River System would be subject to more significant supply reductions than other customers during dry years.

The analysis of the allocation of the PG&E supply in the IWRP indicates that in a future multi-year drought, the reduction in deliveries through the Yuba-Bear system would be 30,000 ac-ft/yr. Although it would be the subject of Board policy at the time it occurs, it is assumed in the modeling that raw water cutbacks would be allocated as follows: Raw water to Zone 5 would be cut to zero first because they have greatest access to groundwater to replace PCWA deliveries; and then Zone I raw water customers would be cut to 97 percent of their normal supply as 10,000 AF of treated water demands in the Foothill/Sunset system are shifted to groundwater in this scenario.

In the single driest year, the reduction in Yuba-Bear system deliveries would be 55,000 ac-ft/yr. The modeling for this scenario is driven primarily by the inability to shift much additional water within the Yuba-Bear system from treated water deliveries to raw water deliveries. All of the rest of the loss in Yuba-Bear supply must be allocated to the raw water system. The result is that raw water deliveries would be reduced from a normal year supply of 75,000 ac-ft/yr to only 34,000 ac-ft/yr (57% supply in Zone 1, 45% overall) in a single driest year event.

Conclusions:

The Agency has begun negotiations with PG&E on the renewal of its Zone 1 water supply contract. The primary issue will be price. The parties agree that the price for water should represent an equitable sharing of the cost of operating the delivery system between power generation and water deliveries purposes. The Agency expects to conclude a new water supply contract with PG&E well before the expiration of the existing contract in 2013.

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The Agency understands that there will be considerable emphasis on aquatic resource impacts associated with the diversion of water from the Yuba and Bear rivers for hydroelectric generation and consumptive use in Placer County. The Agency intends to be an active participant in this relicensing in an effort to find mutually beneficial solutions to improve the environment and protect its customers. The other participants will have to recognize however, that the consumptive uses predate the hydroelectric generation and under the Federal Power Act, FERC has limited ability to impose conditions on the hydroelectric operations which would adversely affect those consumptive uses.

Finally, because of the physical separation of the Agency's historic water systems that were supplied exclusively from PG&E's water system from the new systems being built for the proposed growth in western Placer County that will be met with MFP and CVP supplies, shortages in PG&E supply, whether as a result of drought or because of regulatory action, do not result in reduced supplies for new development.

If you have any questions on this subject, please call Brian Martin at (530) 823-4886.

Sincerely,

PLACER COUNTY WATER AGENCY

Lowell M Jowis, Vice-chairmon for Board of Directors, ale Ferriere Chair, PCWA Board of Directors

AF/BCM/ns

pc: PCWA Board of Directors